# IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA.

***RSA No. 226 of 2006***

**Date of Decision : November 27, 2007**

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Shobhia & others …Appellants.

Versus:

Mastia & Others …Respondents.

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***Coram*:**

**The Hon'ble Mr. Justice Sanjay Karol, Judge**.

*Whether approved for reporting?*[1] *No*

For the appellants: Mr. Ashok Sood, Advocate.

For respondents 1 & 2: Mr. G. D. Verma, Sr. Advocate with Mr. B. C. Verma, Advocate.

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**Sanjay Karol, J (oral).**

The appellants who are the plaintiffs have assailed the judgment and decree dated 9.1.2006 passed by the District Judge, Shimla in Civil Appeal No. 67-S/13 of 2005, titled as Shobia & others v. Mastia & others, dismissing the appellants' appeal assailing the judgment and decree dated 15.6.2005 passed by the Civil Judge (Sr. Division) Court No.1, Shimla in case No. 102-1 of 2000 titled as Shobia & others v. Mastia & others. The present appeal therefore arises the concurrent findings of facts recorded by the Courts below.

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[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

Notice in the present appeal was issued and the record of the trial Court was also perused.

The appellants-plaintiffs filed a suit praying for the following reliefs:-

> "a) The revenue entries showing Aklu and the contesting defendants as non-occupancy tenants in the suit land are wrong, null and void, and be set-aside.
>
> b) Mutation No. 326, dated 18.9.1997 conferring proprietary rights under Section 104 of the Tenancy and Land Reforms Act, by AC II Grade, is null and void abinitio being without jurisdiction, and thus is liable to be set-aside.
>
> c) Permanent prohibitory injunction restraining the contesting defendants from interfering in the possession of the plaintiffs over the suit land."

Both the Courts below while dismissing the appellants suit have held that as per the jamabandi (revenue record) Ext.DW-3/A pertaining to the year 1952-53, Shri Sundru (predecessor-in-interest of the plaintiffs) was recorded as occupancy tenant through Shri Aklu (predecessor-in-interest of the defendants) who was also recorded as non-occupancy tenant. The Courts below have concurrently held that the position with regard to the suit property continued to be as such thereafter till the year 1975. Exts.DW-3/C and DW-3/D jamabandies for the year 1960-61 and 1964-65 are to the said effect have been proved on record.

With the enforcement of the provisions of the H.P. Tenancy and Land Reforms Act, 1972 (hereinafter referred to as 'the Act'), the tenants were to be automatically conferred with the proprietary rights of the tenanted premises. This is the view already taken by this Court in ***Mehar Chand & others*** v. ***Rakesh & others*** (Latest HLJ 2006(2) HP 1378).

By virtue of the provisions of Section 104 of the Act, proprietary rights were conferred upon the plaintiffs as occupancy tenant in terms of mutation No. 154, dated 10.6.1975 and thereafter in favour of the defendants as non-occupancy tenant vide mutation No. 326, dated 18.9.1997.

The Courts below have concurrently held that the respondents-defendants (including their predecessor-in-interest) continued to be in occupation of the premises since the year 1952-53 as non-occupancy tenants. This fact is not disputed by the appellants also.

The impugned judgment has been assailed on the ground that the orders dated 4.6.1997 on the basis of which the proprietary rights were conferred upon the defendants on 18.9.1997 were passed in violation of the principle of natural justice. Importantly, the said order has not been assailed in the suit filed by the plaintiffs. Be that as it may be, in view of their status as non-occupancy tenant, recorded since 1952, itself entitles them to be the statutory protection and conferment of proprietary rights with respect to the suit land. The revenue entries, recorded over a period of time, showing the defendants

as tenants cannot be doubted. That no payment was made to the plaintiffs would not by itself defeat the defendants rights. The plaintiffs have remedy to recover rent from the defendants. The plaintiffs are not the original owners of the land who have exercised their right of resumption as owners under the Act. Both the plaintiffs and the defendants were entitled for protection under the Act.

For the aforesaid reasons, I see no reason to interfere with the concurrent finding of facts recorded by the Courts below. No substantial question of law arises for consideration by this Court. The appeal is accordingly dismissed.

**November 27, 2007.** **(Sanjay Karol)**
***(rana)*** **Judge.**